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Decision 95-03-042 March 22, 1995

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BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's )  
Own Motion Into Mobile Telephone ) I.93-12-007  
Service and Wireless Communications. ) (Filed December 17, 1993)

O P I N I O N

MAR 23 1995

I. Background

FOO MAIL ROOM

On August 3, 1994, we issued Decision (D.) 94-08-022 adopting wholesale cellular rate unbundling as part of our overall policy of enhancing competition in the commercial mobile radio service market. Subsequent to the issuance of D.94-08-022, various parties filed applications for rehearing and requests to stay the decision pending resolution of the rehearing applications.

Although we have not yet issued our decision on the allegations of error raised in the rehearing applications, we did issue D.94-11-029 which denied the parties' requests to stay D.94-08-022. In D.94-11-029, we also directed the assigned Administrative Law Judge (ALJ) to take appropriate steps to solicit, for our consideration, the input of the parties regarding implementation measures to facilitate the unbundling process ordered in D.94-08-022. Accordingly, an ALJ ruling dated November 9, 1994 solicited supplemental comments on rate unbundling implementation as to (a) development of the unbundled rates and (b) the technical exchange of data and studies required to develop a reseller switch engineering plan. Comments were filed on November 30, 1994. By this decision, we address issues raised in parties' filed comments related to implementation of our unbundling program.

II. Quantification of Unbundled Rates

A. Position of Cellular Carriers

Parties express conflicting views over how unbundled rates are to be developed. Carriers generally oppose any unbundling of wholesale rates, based on the arguments presented in their applications for rehearing of D.94-08-022. Carriers' comments on the implementation of unbundling are thus offered subject to disposition of their applications for rehearing, and are not intended to endorse any form of wholesale rate unbundling. The carriers argue that if D.94-08-022 is taken to mean that the existing tariffed access charge is simply to be eliminated, then this order conflicts with discussion elsewhere in D.94-08-022 indicating that unbundled rates are to be "market-based," as determined by the carrier. Carriers claim there is apparent inconsistency between pronouncements which allow "cellular carriers to charge a market rate for these unbundled services" (D.94-08-022, mimeo at p. 80) and restrictions requiring that unbundling be "based upon existing tariffed elements with prices capped at existing levels." Carriers complain that "market-based" unbundling of the airtime rate from the access charge rate deprives them of recovery of the costs of certain required functions they will still perform for switch-based resellers. They claim these residual costs are embedded in the access charge which would be avoided by switch-based resellers. For example, carriers will still provide trunk line connection between the reseller switch and the MTSO.

The ALJ ruling solicited parties' comments on the merits and feasibility of setting the unbundled rate for competitive services equal to the existing contract charges paid by a carrier to the local exchange carrier (LEC) for access and interconnection. The carriers agree generally that the access and interconnection charges a carrier pays to each LEC are specified in a contract

between the two carriers,<sup>1</sup> and that those charges could be disclosed for purposes of establishing unbundled rates pursuant to an appropriate nondisclosure agreement. The carriers contend, however, that while it is possible to quantify how NXX<sup>2</sup> charges and LEC interconnection costs are recovered in existing wholesale rates, there is more involved in developing unbundled rates.

The carriers contend that they will have to install new network equipment and software at additional cost which should be paid for by the switch-based reseller. The carriers believe that they should be able to take into account both the additional costs as well as savings resulting from reseller switch interconnection in establishing unbundled rates. McCaw Cellular Communications, Incorporated (McCaw) states that such additional costs would be developed by the cellular carrier as part of the process of developing its advice letter filing. The final costs would depend upon the precise configuration of interconnections which are made available to the reseller. The carriers generally contend that the ultimate structure of the revised wholesale tariff reflecting reseller switch interconnection remains the responsibility of each cellular carrier as prescribed by D.94-08-022.

GTE California Incorporated argues that the Commission should make an informed decision about whether unbundling NXX codes and LEC interconnection will result overall in avoided costs or

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<sup>1</sup> Pursuant to D.94-04-085, cellular carriers were directed to file proposed tariffs for wireless interconnection services with the LEC. Those tariffs have been filed, but have also been protested. Until the protests have been resolved and final tariffs approved, the interconnection services continue to be offered under contract.

<sup>2</sup> NXX charges reflect the costs paid to the serving landline carrier for dedication of a block of number dialing codes from which individual telephone numbers can be assigned.

increased costs prior to issuance of any further order directing carriers to unbundle their wholesale rates at prescribed prices.

The carriers also express certain additional concerns with respect to quantifying the appropriate savings which would result from the reseller switch. Bay Area Cellular Telephone Company (BACTC) claims, for example, that the structure of LEC interconnection rates is not simple. BACTC's interconnection rates include varying per-minute rates depending on where calls are completed. Its rates also vary depending on call volume delivered over a three-year term. BACTC also states that it may not be appropriate in all instances to develop unbundled rates applicable to the access charge. To the extent that LEC interconnection charges are levied on a per-minute-of-usage basis, BACTC argues that unbundled airtime rate elements would be appropriate to reflect the switch-based reseller's cost avoidance.

The carriers claim there are additional complications regarding the charges for NXX codes. Los Angeles Cellular Telephone Company (LACTC) states that the most recently renegotiated Cellular Interconnection Agreement between most cellular carriers and Pacific Bell provides for both nonrecurring NXX programming fees and a recurring monthly charge. LACTC suggests that the savings resulting from the reseller taking over these costs could be calculated by imputing an interest factor on the nonrecurring activation charge and adding this to the recurring monthly charge. Interconnection charges are also a function of the number of call set-ups and the call duration. US West Cellular of California, Inc. (USWC) states that even if a switch-based reseller chooses to obtain its own dedicated NXX codes from Pacific Bell, it is not clear that the nonrecurring charges paid earlier by the cellular carrier for existing NXX codes are thereby avoided. USWC currently provides wholesale service to resellers using numbers taken from dedicated NXX codes which it has purchased from Pacific Bell, but does not "dedicate" an entire NXX code to a single

reseller. Resellers' demand for new numbers has only been in small batches, not large enough to warrant a request that an entire 10,000 telephone number block associated with an NXX code be dedicated to them. Moreover, USWC states that because it is such a disruptive process to change a cellular customer's number, resellers may choose to continue to take numbers from the serving cellular carrier and simply have them reside in their own switch. In this event, the unbundling of NXX nonrecurring charges would not occur.

USWC states that because NXX charges are paid at the opening of the NXX code and not on a recurring monthly basis, the NXX set-up cost is sunk and not avoided by resellers moving numbers on to a new NXX code. USWC states that the savings to the carrier would be the time value of money associated with the delay in the date on which the carrier must purchase a new NXX code. The savings would be a one-time event subject to amortization over some discrete period. Accordingly, USWC is not clear that there practically can be any explicit recognition in wholesale rates of "savings" associated with movement of reseller numbers to a new NXX code.

McCaw makes a similar point in its comments, claiming that the useful life for amortization of a NXX code charge is at least 20 years and computes an equivalent monthly reduction in wholesale rates of \$0.00646 per number per month. McCaw contends, however, that a cellular carrier must still "activate" reseller NXXs in its switch, thereby causing costs comparable to those of the LEC NXX charge taken over by the reseller. Thus, McCaw claims that the reseller number block would then be programmed in both the LEC switch and the cellular carrier switch, requiring two activation charges.

USWC suggests two alternative approaches in treating the avoided-cost savings related to access usage or airtime charges levied by the landline carrier for termination of cellular calls.

As one option, USWC suggests the unbundling of usage rate elements into separately stated rates which mirror the landline carrier's access usage charges. Yet, USWC claims that the Pacific Bell access tariff incorporates usage charges for landline termination of calls originating on the cellular network only, but does not set forth any charges for calls originating on the landline network and terminating on the cellular network. Thus, USWC contends that a wholesale tariff which simply stated the separate rate elements would improperly reduce the cellular usage charge in those cases of land-to-mobile calls where there is no cost avoidance.

As another option, USWC suggests a mechanism which leaves the wholesale usage rate intact, but establishes a credit to the reseller for charges avoided every time a reseller call is terminated on the landline network. Calls moving in the opposite direction would not receive any credit. This credit mechanism would need to reflect and be capable of capturing both the call set-up cost and the call duration cost for each call terminated to the landline network using such arrangements.

B. Position of Resellers and Consumer Groups

Cellular Resellers Association (CRA) believes that the savings to be passed through to the switch-based reseller under Ordering Paragraph (OP) 4 is an amount equal to the existing tariffed access charge of the carrier.<sup>3</sup> CRA contends that it would be impossible to implement OP 4 without a full credit of the existing access charge to the switch-based reseller because there would no longer be any way for the cellular carrier to calculate the correct access charge for a switch-based reseller. Presently,

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<sup>3</sup> OP 4 of D.94-08-022 provides:

"Upon activation of the interconnection arrangement with the reseller, its billing shall be adjusted by applying a credit equal to the access charge on the reseller's bill."

the access charge is based on the number of end-use customers served by the reseller. Yet, the carrier would no longer know the number of end-use customers since the carrier's Mobile Telephone Switching Office (MTSO) would be programmed only to recognize the Numbering Plan Area (NPA)/NXX code for each reseller number and to route such calls to the reseller's switch.

CRA further contends that the cellular carrier incurs no costs related to the access charge because the costs of all cellular facilities used by a subscriber of a switch-based reseller are variable in relation to airtime traffic. Since a cellular subscriber's only access to the cellular network is exclusively through the airwaves, CRA contends that there is no cost justification for assessing an access charge. CRA argues that the only charges billed for switch-based reseller service should be variable usage charges.

Although CRA agrees that D.94-08-022 holds switch-based resellers responsible for "the direct costs of interconnection of their switches to the cellular MTSOs," CRA claims that such charges have been eliminated by cellular carriers in similar contexts. In support of this claim, CRA cites the tariff on file with the New York Public Service Commission which provides United Parcel Service (UPS) access to cellular carriers' MTSO for resale purposes. CRA references the NYPSC tariff to show that UPS is afforded tariffed rates without access charges. Instead, the direct MTSO interconnection afforded UPS involves recognition of a "pseudo number" dedicated to UPS which CRA analogizes to the NXX code recognition for the cellular reseller.

CRA cites the letter dated August 17, 1992, from the Commission Advisory and Compliance Division, Chief of Telecommunications Branch, to PacTel Cellular (now Airtouch) and McCaw which states that the basic service element of the duopoly cellular carrier/UPS arrangement must be unbundled if the Commission so orders. Since the Commission has now ordered

unbundling in D.94-08-022, CRA argues that this direct switched interconnection for unbundled basic transmission, which does not entail an access charge, must now be afforded to others.

The Division of Ratepayer Advocates (DRA) states that in addition to the access and airtime usage charges, there is also a wholesale number activation charge which should be considered in the unbundling of rates. DRA believes that the number activation charge includes payments to the LEC for NXX codes, and that the airtime usage rates of at least some carriers include LEC interconnection charges. Noting that the NXX and LEC interconnection charges are set out in contracts, DRA proposes that all carriers should be ordered to publish a number activation charge and airtime usage charges both with and without these unbundled rate elements. In addition, DRA interprets D.94-08-022 as ordering the complete elimination of the existing access charge. DRA states that cellular carriers have not explained what services the access charge covers, nor the basis for the current rate. DRA believes that elimination of the access charge is required to permit resellers to become financially viable and to make the cellular market more competitive. To the extent that the access charge covers legitimate costs which carriers should recover, DRA proposes that carriers be required to provide appropriate cost information so that a fair access charge can be determined.

The County of Los Angeles (County) contends that the facilities-based carriers have both the incentive and the ability to set prices for monopoly bottleneck elements at whatever rates the market will bear. The County does not believe the Commission intended in D.94-08-022 that cellular carriers would apply monopoly prices to the unbundled bottleneck service elements which the carriers control. Rather, the County believes the term "market-based" should be read as implying a less burdensome administrative alternative to cost-based pricing. The County believes the carrier should be free to adjust the balance between the monthly access



rate and the per-minute airtime rate, as long as the resulting rate structure applies equally both to resellers and to end users on the same terms and conditions and in a nondiscriminatory manner.

C. Discussion

Parties' conflicting interpretations of D.94-08-022 with respect to wholesale rate unbundling highlight the need for elaboration and clarification as to how rate unbundling and reseller switch interconnection are to be implemented.

As a basis for understanding the rationale of our market-based unbundling approach as ordered in D.94-08-022, it is helpful to refer back to our initial order adopting wholesale rate unbundling in D.92-10-026, 46 CPUC 2d at 1. Therein, we stated:

"Our reason for requiring the unbundling of wholesale rates is to promote increased efficiency and innovative use of the cellular network by opening up the network to additional competition. . . . We therefore unbundle into wholesale rate elements only those functions that cannot be provided by competitors, that is the portion of the network between the mobile unit and the switch, and certain switching functions." (Id. at 20.)<sup>4</sup>

The unbundling of wholesale rates was intended to provide some relief against the threat of predatory pricing. The threat of predatory pricing by carriers increasing wholesale rates to subsidize retail operations was identified in D.92-10-026. In that decision, we adopted certain modifications to the Uniform System of Accounts (USOA) as a means of guarding against predatory pricing. Yet, noting concerns over the practicalities of developing cost-based standards within a reasonable time, we subsequently granted

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<sup>4</sup> By D.93-05-069, dated May 19, 1993, we granted limited rehearing of D.92-10-026 regarding the reseller switch and wholesale tariff unbundling. The rehearing was consolidated with our investigation in this proceeding (I.93-12-007).

rehearing of that order and opted not to implement the USOA changes, as concluded in D.94-08-022. Our decision not to implement the USOA changes did not mean that the threat of predatory pricing had been eliminated. While the carriers claim that the reseller switch is not economically feasible, it is the potential for such predatory "price squeezes" through high duopolistic bottleneck rates that contributes toward undermining the cost-effectiveness of the reseller switch. Thus, in part, as a remedy to the risk of predatory pricing, we adopted whole rate unbundling.

Thus, in D.92-10-026, the "unbundled" rate referred only to the cost of "bottleneck" services and related rate elements, i.e., those services which only one of the duopoly carriers could provide. In D.92-10-026, we envisioned isolating the appropriate unbundled rate by requiring cost studies identifying only "direct embedded costs" (46 CPUC 2d at 19) attributed to such bottleneck services. We concluded that the remaining portion of the cellular network need not be subjected to cost studies, for this portion could be market priced since it was competitive.

We concluded in D.94-08-022 that cost studies to determine unbundled rates were not feasible. Moreover, without a full study of the carriers' overall cost of service, we cannot determine how much the reseller really pays for the bottleneck services which are being unbundled or what amount of duopolistic profits may be embedded in the airtime rate versus the access charge. CRA and CSI have argued that access should be unbundled from airtime and a reseller with a switch should be able to avoid all access costs. As noted in the comments of LACTC, both airtime and access charges have historically been based on marketing considerations, and have not necessarily correspond to separate cost elements. Thus, we cannot conclude that the access charge recovers only costs directly associates with the provision of access. Thus, we were faced with finding an alternative means of

implementing our unchanged mandate to promote competitiveness through wholesale rate unbundling and reseller switch interconnection. We accomplished this objective through the market-based unbundling program adopted in D.94-08-022.

D.94-08-022 did not render findings on the cost of the reseller switch in comparison to any expected savings. This was unnecessary since we have stated that it shall be the responsibility of each reseller to decide whether any given switch interconnection makes both technical and economic sense. As we stated in D.92-10-026:

"Resellers will not be required to prove the technical feasibility of their proposed switches, just as the facilities-based carriers are not required to do so when they install a switch. We will rely on market forces and technological advances to influence when resellers decide they are ready to move into the market as switch resellers."

As a practical matter, we expect the parties to exchange data to permit the reseller to assess the cost-effectiveness of the proposed interconnection during the course of preparation of a bona fide engineering plan of the reseller switch.

The reseller should have access to all relevant data to permit an informed decision on whether its reseller switch interconnection plan is feasible. The reseller may also consider any additional revenues it could generate from offering new enhanced services as a switch-based provider. Various carriers contend that any net savings from reseller switch interconnection will be more than offset by the additional costs involved. If any given switch interconnection ultimately does not make technical or economic sense, no rational reseller will continue to pursue it. We expect the marketplace to weed out any uneconomic reseller switch proposals. The Commission does not need to second guess the economic feasibility of any given reseller switch proposal or make any findings thereon before rate unbundling can be implemented.

Parties disagree whether under OP 4 of D.94-08-022, the existing access charge is to be eliminated from the bill of switch-based resellers or not. The intent of our unbundling order is that the switch-based reseller who receives unbundled service shall not pay the tariffed access charge currently required of switchless resellers. Rather, switch-based resellers will pay flat-rate charges that will be intended to recover the wholesale carrier's facilities interconnection costs, LEC-interconnection costs inasmuch as it is provided by the wholesale cellular carrier, and other just and reasonable charges. Resellers that do not elect to become switch-based will continue to pay the current access charge since those resellers will still receive bundled service from carriers.

As stated in D.94-08-022, resellers will be responsible for the direct costs of interconnection of their switches to the cellular MTSOs and will maintain their own connections to the local exchange carrier. Accordingly, to the extent a carrier incurs additional costs for interconnection with a reseller's switch, such carrier may recoup any reasonable costs from the reseller. Thus, while the currently tariffed access charge in its present form will no longer be paid by the switch-based reseller, nonetheless, the reseller will appropriately be charged for provision of bottleneck services, in addition to interconnection to the cellular carrier's MTSO. In establishing its unbundled access rate elements, the carrier may take such costs into account.

Since we adopt a market-based approach to unbundling, we expect the carrier and reseller to work out the expected recurring and nonrecurring costs of interconnecting the reseller switch between themselves as part of the development of a bona fide engineering plan. The cost of the interconnection may, if necessary, include costs incurred by the carrier to reconfigure its system to accommodate the switch. The cost incurred by the carrier for such reconfiguration will depend upon individual negotiations and the design plan adopted.

We have elected not to scrutinize the costs and profits embedded in the carriers' airtime rates. Yet, even without a cost-of-service study, it is obvious that LEC interconnection charges are included in the airtime rate of certain carriers, as specified in the tariff itself. Accordingly, in such cases where the carriers' interconnection charges are included in the airtime rates, such carriers are directed to establish unbundled airtime rates which removes such charges.

In any event, as long as the sum of the unbundled rate elements for charges other than traffic-sensitive airtime does not exceed the total existing rate band price caps for bundled access charges applicable to switchless resellers, the carriers shall have discretion to set the value of such rate elements. The specific design of unbundled rate elements within these price cap constraints will be the responsibility of the cellular carrier. Our granting of flexibility to the carrier in designing unbundled rates is not a license for the carriers to circumvent the intent of our unbundling order by ignoring known cost savings or by loading in more profit margin in establishing unbundled rate elements.

The carrier shall then determine the unbundled rates to be charged to the switch-based reseller following the principles outlined herein and file an advice letter for the adoption of those rates. In filing its advice letter proposing adoption of unbundled rates, the carrier will no longer charge the switch-based reseller the existing access charge. But the carrier may include additional unbundled rate elements necessary to recoup its costs incurred for the interconnection. Nothing in this order prohibits carriers from establishing charges, flat or fixed, that are associated with the provision of bottleneck services and physical interconnection to cellular carriers' network. We shall not dictate the precise number of separately stated unbundled rate elements that each cellular carrier may identify. However, at a minimum, the proposed recurring and nonrecurring tariffed rate elements should include airtime, interconnection, switching, and billing. (D.92-10-026, 46 CPUC 2d at 21.)

As stated in D.94-08-022, we shall not initiate cost-of-service proceedings as a basis to establish unbundled rate elements, as long as carriers do not exceed their existing price cap levels. In the event, however, that a carrier should seek to establish unbundled rates for a proposed reseller switch interconnection which would trigger an increase in total rates in excess of existing rate band caps, the carrier would then become subject to the provisions of OP 9 of D.90-06-025, (36 CPUC 2d at 516.) As we stated in adopting our cellular rate band guidelines in D.93-04-058: "The requirements of OP 9 would continue to apply for all rate increases beyond the carrier's existing rate levels." OP 9 prescribes various market and cost data to be provided to the Commission by the carrier to justify a proposed rate increase.<sup>5</sup>

In turn, the reseller would be at risk for paying these additional costs if they were found reasonable and approved. The reseller should weigh this risk in deciding whether to pursue its reseller switch interconnection.

### III. Technical Data Required for Reseller Switch Engineering Plans

Another area of dispute among the parties concerning implementation of unbundling relates to the exchange of technical data and studies necessary to complete a reseller switch engineering plan. D.94-08-022, OP 1 required resellers interested in becoming switch-based to:

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<sup>5</sup> On January 5, 1995, an ALJ ruling in this proceeding solicited comments regarding modification or elimination of OP 9 of D.90-06-025. Comments were received on January 26, 1995. A Commission decision regarding disposition of this issue is pending. In the event OP 9 is subsequently eliminated or modified, carriers would then be subject to the modified requirements.

"submit to the cellular carrier a bona fide request for unbundled service, accompanied by an engineering plan describing how the provider would interconnect with the dominant carrier's mobile service telephone switching office (MTSO). The plan would have to demonstrate the compatibility between the reseller's switch and the dominant carrier's MTSO."

**A. Positions of Parties**

The carriers and resellers are in dispute over their respective rights and obligations in terms of compiling data and performing studies necessary to prepare an engineering plan that demonstrates the compatibility of the reseller switch. The resellers allege carriers have been uncooperative in responding to data requests necessary to prepare the engineering plan. CRA contends that carriers have no valid reason to refuse to cooperate with resellers in compiling technical data required to prepare engineering plans, but that data exchange agreements can be easily patterned after those agreed to between cellular carriers and the LEC. CRA states that carriers' alleged concern over confidentiality, potential burden, and difficulties in the exchange of technical data related to reseller switch interconnections have not prevented the successful exchange of data between USWC and Nova Cellular West. CRA contends that the interconnection requests of Cellular Services, Inc. and Comtech made to major carriers were similar in all material respects. Accordingly, CRA argues that other switch-based resellers should be afforded the same treatment.

The carriers allege that it is the responsibility of resellers to compile the data and conduct the studies required to demonstrate the technical feasibility and compatibility of their switches. The carriers also claim that there are a number of unresolved generic technical issues which the resellers have not addressed in their reseller switch proposals. The carriers argue that these technical issues must be resolved before final implementation of reseller interconnection and rate unbundling.

Certain carriers proposed that technical workshops be convened as a forum to address the technical issues involved in implementing the reseller switch. McCaw proposes that such workshops should be used instead of one-on-one negotiations and should include all interested parties who would desire to interconnect with cellular systems.

B. Discussion

The assigned ALJ scheduled a prehearing conference for January 11, 1994 to consider the feasibility of using a generic technical-workshop forum to seek resolution of some or all of the disputes among the parties over the exchange of information and studies needed to complete the engineering plans. On January 19, 1995, the assigned ALJ issued a ruling adopting various procedures to facilitate the exchange of data required to implement the reseller switch. Among other things, the ruling ordered the parties to proceed with the pilot trial test of interconnecting a reseller switch with the incumbent cellular carrier, as proposed by CRA, in order to identify and resolve any technical impediments associated with such interconnection. The ruling further ordered CRA and LACTC to agree in writing to the terms under which the trial test can proceed. Upon such agreement, the parties were then ordered to execute the trial test and to prepare debriefing documents describing the test and its results.

On January 30, 1995, CRA and LACTC jointly submitted a report to the ALJ regarding progress which had been made toward complying with the ALJ ruling. The progress report indicated the the parties have met and conferred to discuss the exchange of information required for the participating resellers to make a written test proposal to LACTC. The progress report also stated that a test schedule would be provided to the Commission as soon as it is available.

By this order, we affirm the ALJ's ruling in connection with the trial test and impose a deadline on parties for completion



of the trial test and the filing of debriefing documents describing the test and its results. We expect a written agreement between LACTC and the participating resellers to be reached governing the terms of the pilot test, the technical pilot test to be concluded, and debriefing documents describing the test and its results to be filed with the CPUC no later than May 31, 1995.

The pilot test for the reseller switch was proposed by CRA almost three months ago. CRA and LACTC have been meeting, conferring, and exchanging information to facilitate the implementation of the pilot test. We believe that giving the the test participants until May 31, 1995 is more than ample opportunity in which to complete these tasks.

We affirm the ALJ's ruling that carriers are not to delay or refuse to cooperate with resellers in the exchange of data to implement switched interconnection, pending a final decision on the applications for rehearing of D.94-08-022. Our denial in D.94-11-029 of requests for emergency stay of the decision disposed of carriers' claims that they were entitled to refuse to exchange data with resellers pending a final decision on the rehearing applications.

We direct the ALJ to continue monitoring the progress of exchange of data required in connection with reseller switch implementation. In the meantime, we direct the parties to continue to meet and confer with the goal of implementing wholesale rate unbundling as ordered in D.94-08-022 and as further clarified herein. Parties shall continue to seek to narrow their disputes and facilitate a cooperative exchange of data. Generally, we agree that resellers should assume primary responsibility for compiling, the data required to complete their engineering plan, and should use publicly available data sources where feasible. On the other hand, carriers are expected to cooperate in providing resellers necessary confidential data under appropriate nondisclosure

agreements to the extent required to complete the reseller's engineering plan.

Findings of Fact

1. D.92-10-026, issued October 6, 1992, adopted a requirement that wholesale cellular rates be unbundled, based upon cost studies to determine the direct embedded costs attributable to bottleneck services.

2. D.93-05-069 granted limited rehearing of D.92-10-026 on certain issues, including whether to pursue cost studies as a basis for unbundling.

3. On August 3, 1994, the Commission issued D.94-08-022 adopting a wholesale rate unbundling program for cellular carriers and authorizing cellular resellers to implement reseller switch interconnection.

4. On September 6, 1994, various parties filed applications for rehearing and immediate stay of D.94-08-022 alleging, among other things, legal error and ambiguity in the wholesale cellular rate unbundling ordered to be implemented.

5. On November 9, 1994, the Commission issued D.94-11-029 denying the requests for stay of D.94-08-022 and directing the ALJ to solicit supplemental comments from parties on measures to facilitate the implementation of the unbundling program.

6. In response to the November 9, 1994, ALJ ruling, parties filed comments on November 30, 1994 addressing the manner in which unbundled rates were to be developed and the means by which technical development of engineering plans for reseller switch proposals could be facilitated.

7. The "market-based" approach to unbundling as adopted in D.94-08-022 is a means of setting unbundled rates by reference to the existing rate band caps without conducting detailed cost studies.

8. From a market perspective, it is the traffic-sensitive airtime rate, not the access charge, which appropriately reflects

the bottleneck service value which a switch-based reseller (and its subscribers) receive from the cellular carrier.

9. The access charge is not necessarily limited only to recovery of certain costs, but may also include a duopolistic profit element, depending upon the marketing considerations involved.

10. While carriers have commented on certain factors involved on quantifying the direct incremental costs involved with acquisition of NXX codes and LEC interconnection, they have not shown to what extent a profit markup is passed on to resellers through the access charge.

11. Under the "market-based" unbundling approach, the cellular carrier will no longer charge the currently tariffed access charge to switch-based resellers.

12. The charges paid by the cellular carrier to the LEC for interconnection and NXX codes are set out in contracts and can be readily identified.

13. D.94-08-022 indicates that cellular carriers may recoup additional reasonable costs for interconnection with a reseller's switch.

14. D.94-08-022 does not include findings on the cost-effectiveness of the reseller switch, but leave the responsibility with each reseller to assess whether its switched-interconnection plan was economically viable and technically feasible.

15. As noted in the applications for rehearing, replies thereto, and comments filed on November 30, 1994, parties disagree over responsibilities and rights relating to the compilation and exchange of technical data required to complete a bona fide engineering plan for reseller switch interconnection.

16. Various carriers propose that a generic technical workshop forum be used to collectively resolve issues over required technical data and responsibilities for its compilation and

exchange in connection with implementation of final engineering plans for a reseller-switch interconnection.

17. A prehearing conference was convened on January 11, 1995 to hear arguments on the merits of using a workshop forum to resolve technical issues over data requirements, compilation, and exchange in connection with the reseller switch.

18. On January 19, 1995, the ALJ issued a ruling adopting procedures for the exchange of technical data as a means of facilitating the implementation of the reseller switch.

19. The January 19, 1995 ALJ ruling ordered LACTC and participating resellers to enter into an agreement governing the execution of a reseller switch pilot test, conduct the pilot test, and file debriefing documents with the CPUC describing the test and its results.

#### Conclusions of Law

1. The quantification of unbundled rates should take into account both the reasonable additional costs as well as charges attributable to services the cellular carrier will provide to the reseller's switch interconnection.

2. After an appropriate bona fide engineering plan for a reseller switch interconnection is submitted by a reseller to a carrier as directed in D.94-08-022, the carrier shall file an advice letter to reconfigure existing bundled rates into unbundled rate elements.

3. The "credit" applied to the reseller's bill noted in OP 4 of D.94-08-022 has reference to the switch-based reseller's avoidance of the unbundled rate(s) for functions it procures apart from the cellular carrier, and the savings resulting therefrom.

4. It is the responsibility of the cellular carrier to develop unbundled rates, including unbundled access charges, which are reflective of the functions being unbundled. To the extent a carrier's currently-tariffed usage per-minute rates include

recovery of LEC interconnection charges, the carrier should establish a separate unbundled usage rate excluding such charges.

5. Under the Commission's rate band pricing guidelines, the cellular carrier's flexibility in designing unbundled rates is limited by the existing rate band caps on per-minute usage rates and the rate band caps on access charges. Unbundled rates should be just and reasonable.

6. It should be the primary responsibility of the reseller to develop its own engineering plan and to obtain required data from public sources to the extent available. Resellers should only seek access to commercially sensitive data of cellular carriers when such data is required to complete a bona fide engineering plan.

7. As part of the data exchange process in preparing the reseller switch engineering plan, resellers should be provided all pertinent data requested from the facilities-based carriers to permit the reseller to make an informed judgment of the feasibility of implementing the reseller switch interconnection.

8. The loss in precision in quantifying unbundled rates under the "market-based" approach is an acceptable tradeoff in view of the benefits of avoiding the performance of costly, time-consuming cost studies which would forestall expedited implementation of any unbundling.

#### O R D E R

IT IS ORDERED that:

1. Prospective switch-based reseller candidates shall continue to meet and confer with their cellular provider to seek resolution of outstanding disputes over the exchange of data based upon the general principles outlined in this order.

2. All resellers who have submitted switch-based proposals to any carrier shall meet and confer with the carrier to discuss

and resolve the alleged impediments to implementation of reseller switch interconnection set forth on pages 6-8 of AirTouch's November 30, 1994 filed comments.

3. Resellers and carriers shall cooperate to develop appropriate nondisclosure agreements governing the exchange of commercially sensitive proprietary data.

4. In the event or to the extent that parties cannot agree on the terms of data exchange under nondisclosure agreements, the reseller may file a motion to compel production of the data, and may request that a shortened time be allowed for replies to the motion.

5. Carriers shall be responsible for cooperating to provide necessary data to resellers which cannot be obtained or produced from other sources, but may charge resellers for direct costs incurred to produce new studies or to compile data. If a carrier objects to providing confidential data under a nondisclosure agreement, the carrier shall bear the burden of showing why it should not be ordered to produce such data.

6. As part of the data exchange in preparing the reseller switch engineering plan, carriers shall provide resellers with all pertinent data which is requested so that the reseller can make an informed judgment of the technical feasibility and cost-effectiveness of implementing the interconnection.

7. Los Angeles Cellular Telephone Company (LACTC) and participating resellers shall enter into a written agreement governing the terms of a pilot reseller switch test, conduct the test, and file with the Commission debriefing documents describing the test and its results no later than May 31, 1995.

8. LACTC and resellers participating in the pilot test shall provide interim progress reports regarding the pilot test by letter to the assigned Administrative Law Judge on April 14, 1995 and May 5, 1995. The progress reports shall indicate the steps parties are taking to meet the deadline of May 31, 1995 as ordered above,

and shall provide justification for any claimed delays or impediments in meeting the May 31, 1995 deadline.

9. Carriers may take into account the additional costs, if any, incurred resulting from the reseller switch interconnection in reconfiguring existing rates into unbundled rate elements.

10. The Commission shall not engage in cost-of-service scrutiny of carriers' operations or unbundled rate elements so long as the total package of the nontraffic-sensitive unbundled elements is no higher than the corresponding authorized rate band caps for access charges applicable to the bundled service.

11. After an appropriate bona fide engineering plan for a reseller switch has been submitted by a reseller to a carrier as directed in Decision (D.) 94-08-022, the carrier shall file an advice letter to reconfigure existing bundled rates into unbundled rate elements based on the principles in the following ordering paragraphs.

12. As long as the carrier's proposed unbundled rates for per-minute airtime do not exceed the carrier's existing rate caps applicable to per-minute airtime, and its unbundled rates for functions presently covered by the access charge do not exceed existing rate caps for access charges, the carrier shall have discretion to set the rate levels for unbundled elements.

13. If a carrier seeks approval of unbundled rate elements which in total, exceed its authorized rate band caps for bundled service, that carrier shall be subject to the provisions of Ordering Paragraph 9 of D.90-06-025 or any subsequent amendments thereto.

This order is effective today.

Dated March 22, 1995, at San Francisco, California.

DANIEL Wm. FESSLER  
President  
P. GREGORY CONLON  
JESSIE J. KNIGHT, JR.  
Commissioners